

REMARKS/ARGUMENTS

The Final Office Action dated January 10, 2007 has been received and reviewed. Claims 1–38 are pending in the subject application. All claims stand rejected. Claims 1–38 are pending in the subject application. Claims 1, 3, 6, 15, 17, 20, 27, 29 and 32 have been amended as herein above set forth. Reconsideration of the present application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 102(b)

A.) Applicable Authority

Anticipation “requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee.” MPEP § 2131, *passim*; *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302 (Fed. Cir. 1995). “[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference.” *Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research*, 304 F.2d 1221, 1227 (Fed. Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)). “The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention.” *Id.* (emphasis added)(citing *Crown Operations Int’l, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002); *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990)). *See also*, *PPG Indus., Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1566 (Fed. Cir. 1996).

B.) Anticipation Rejection Based on U.S. Patent No. 5,682,728 to DeBusk

Claims 1–38 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,682,728 to Debusk et al. (hereinafter the “Debusk reference”). As the Debusk reference fails to describe, either expressly or inherently, each and every element as set forth in the rejected claims, Applicants respectfully traverse this rejection, as hereinafter set forth.

Independent claim 1, as amended herein, recites a system for automatically fulfilling orders for clinical supplies. The system includes an interface to a supply chain engine, the supply chain engine automatically generating at least one order for clinically related supplies based upon supply consumption data *derived from documentation of at least one clinical event* reported from at least one clinically related site, the supply consumption data *including items used and/or consumed during the at least one clinical event*; and a fulfillment engine, communicating with the interface to the supply chain engine, the fulfillment engine triggering delivery of clinically related supplies based at least upon the order for clinically related supplies.

The DeBusk reference, on the other hand, describes the management of consumable medical supplies by creating bills of material associated with care events within a clinical pathway. *See DeBusk reference* at col. 2 lines 29-37. A bill of materials representing those medical supplies that have been identified as “to be used” for a given care event is generated and supplies are aggregated into supply bundles at a plurality of locations and delivered to the end-user of the aggregated supplies. *See id.* at col. 2 line 50–col. 3, line 2; col. 3, line 34. The DeBusk reference also discloses anticipating supply usage based upon historical records relating to the frequency of occurrence of given care events at a particular facility and/or aggregated facility usage of common medical supplies over time. *See id.* at col. 2 line 59–col. 6, line 13.

It is respectfully submitted that the DeBusk reference fails to describe, either expressly or inherently, supply consumption data derived from documentation of at least one clinical event or supply consumption data including items used and/or consumed during a clinical event. Rather, the DeBusk reference describes the management and procurement of supply bundles containing medical supplies “intended for use” in a future care event. *See*, DeBusk reference at col. 5, lines 22-45. As will be appreciated by one of ordinary skill in the art, upon occurrence of the future care event, some of the items included in the supply bundle may not be used all. As such, the supplies “intended for use” and the supplies actually used or consumed during an event cannot be equated.

As the DeBusk reference fails to describe, either expressly or inherently, each and every element recited in independent claim 1, as amended herein, it is respectfully submitted that the DeBusk reference does not anticipate this claim. Each of claims 2–14 depends, either directly or indirectly, from independent claim 1. Accordingly, it is respectfully submitted that these claims are not anticipated by the DeBusk reference for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejection of claims 1–14 is respectfully requested. Each of claims 1–14 is believed to be in condition for allowance and such favorable action is respectfully requested.

Independent claim 15, as amended herein, recites a method for automatically fulfilling orders for clinically related supplies. The method includes automatically generating at least one order for clinically related supplies based upon supply consumption data *derived from documentation of at least one clinical event* from at least one clinically related site, the supply consumption data including items used and/or consumed during the at least one clinical event,

and triggering delivery of clinically related supplies based at least upon the at least one order for clinically related supplies.

As stated herein above with reference to claim 1, the DeBusk reference fails to describe, either expressly or inherently, supply consumption data derived from documentation of at least one clinical event or supply consumption data including items used and/or consumed during a clinical event. Rather, the DeBusk reference describes the management and procurement of supply bundles containing medical supplies “intended for use” in a future care event. *See*, DeBusk reference at col. 5, lines 22-45. As will be appreciated by one of ordinary skill in the art, upon occurrence of the future care event, some of the items included in the supply bundle may not be used all. As such, the supplies “intended for use” and the supplies actually used or consumed during an event cannot be equated.

As the DeBusk reference fails to describe, either expressly or inherently, each and every element recited in independent claim 15, as amended herein, it is respectfully submitted that the DeBusk reference does not anticipate this claim. Each of claims 16–26 depends, either directly or indirectly, from independent claim 15. Accordingly, it is respectfully submitted that these claims are not anticipated by the DeBusk reference for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejection of claims 15–26 is respectfully requested. Each of claims 15–26 is believed to be in condition for allowance and such favorable action is respectfully requested.

Independent claim 27, as amended herein, recites a set of clinically related supplies generated for delivery. The set of clinically related supplies recited in claim 27 is generated by a method including automatically generating at least one order for clinically related supplies based upon supply consumption data derived from documentation of at least one clinical

event from at least one clinically related site, the supply consumption data including items used and/or consumed during the at least one clinical event, and triggering delivery of clinically related supplies based at least upon the at least one order for clinically related supplies.

As stated herein above with reference to claims 1 and 15, the DeBusk reference fails to describe, either expressly or inherently, supply consumption data derived from documentation of a clinical event or supply consumption data including items used and/or consumed during a clinical event. Rather, the DeBusk reference describes the management and procurement of supply bundles containing medical supplies “intended for use” in a future care event. *See*, DeBusk reference at col. 5, lines 22-45. As will be appreciated by one of ordinary skill in the art, the supplies “intended for use” and the supplies actually used or consumed during an event cannot be equated.

As the DeBusk reference fails to describe, either expressly or inherently, each and every element recited in independent claim 27, as amended herein, it is respectfully submitted that the DeBusk reference does not anticipate this claim. Each of claims 28–38 depends, either directly or indirectly, from independent claim 27. Accordingly, it is respectfully submitted that these claims are not anticipated by the DeBusk reference for at least the above-cited reasons. Accordingly, withdrawal of the 35 U.S.C. § 102(b) rejection of claims 27–38 is respectfully requested. Each of claims 27–38 is believed to be in condition for allowance and such favorable action is respectfully requested.

CONCLUSION

For the reasons stated above, claims 1–38 are believed to be in condition for allowance and such favorable action is respectfully requested. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned by telephone prior to issuing a subsequent action.

The fees for a three-month extension of time and for the Request for Continued Examination are submitted herewith. It is believed that no additional fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any additional amount required to Deposit Account No. 19-2112, referencing attorney docket number CRNI.111423.

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Respectfully submitted,

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